

of approval will be published in the FEDERAL REGISTER and will state that a detailed summary of information respecting the safety and effectiveness of the device which was the basis for the order approving the PMA, including information about any adverse effects of the device on health, has been placed on public display and that copies are available upon request. When a notice of approval is published, data and information in the PMA file will be available for public disclosure in accordance with § 814.9.

(e) FDA will send the applicant an approvable letter if the application substantially meets the requirements of this part and the agency believes it can approve the application if specific additional information is submitted or specific conditions are agreed to by the applicant.

(1) The approvable letter will describe the information FDA requires to be provided by the applicant or the conditions the applicant is required to meet to obtain approval. For example, FDA may require, as a condition to approval:

(i) The submission of certain information identified in the approvable letter, e.g., final labeling;

(ii) An FDA inspection that finds the manufacturing facilities, methods, and controls in compliance with Part 820 and, if applicable, that verifies records pertinent to the PMA;

(iii) Restrictions imposed on the device under section 515(d)(1)(B)(ii) or 520(e) of the act;

(iv) Postapproval requirements as described in Subpart E of this part.

(2) In response to an approvable letter the applicant may:

(i) Amend the PMA as requested in the approvable letter; or

(ii) Consider the approvable letter to be a denial of approval of the PMA under § 814.45 and request administrative review under section 515(d)(3) of the act by filing a petition in the form of a petition for reconsideration under § 10.33; or

(iii) Withdraw the PMA.

(f) FDA will send the applicant a not approvable letter if the agency believes that the application may not be approved for one or more of the reasons given in § 814.45(a). The not approvable

letter will describe the deficiencies in the application, including each applicable ground for denial under section 515(d)(2) (A)–(E) of the act, and, where practical, will identify measures required to place the PMA in approvable form. In response to a not approvable letter, the applicant may:

(1) Amend the PMA as requested in the not approvable letter (such an amendment will be considered a major amendment under § 814.37(c)(1)); or

(2) Consider the not approvable letter to be a denial of approval of the PMA under § 814.45 and request administrative review under section 515(d)(3) of the act by filing a petition in the form of a petition for reconsideration under § 10.33; or

(3) Withdraw the PMA.

(g) FDA will consider a PMA to have been withdrawn voluntarily if:

(1) The applicant fails to respond in writing to a written request for an amendment within 180 days after the date FDA issues such request;

(2) The applicant fails to respond in writing to an approvable or not approvable letter within 180 days after the date FDA issues such letter; or

(3) The applicant submits a written notice to FDA that the PMA has been withdrawn.

[51 FR 26364, July 22, 1986, as amended at 57 FR 58403, Dec. 10, 1992]

§ 814.45 Denial of approval of a PMA.

(a) FDA may issue an order denying approval of a PMA if the applicant fails to follow the requirements of this part or if, upon the basis of the information submitted in the PMA or any other information before the agency, FDA determines that any of the grounds for denying approval of a PMA specified in section 515(d)(2) (A)–(E) of the act applies. In addition, FDA may deny approval of a PMA for any of the following reasons:

(1) The PMA contains a false statement of material fact;

(2) The device's proposed labeling does not comply with the requirements in Part 801 or Part 809;

(3) The applicant does not permit an authorized FDA employee an opportunity to inspect at a reasonable time and in a reasonable manner the facilities, controls, and to have access to

and to copy and verify all records pertinent to the application;

(4) A nonclinical laboratory study that is described in the PMA and that is essential to show that the device is safe for use under the conditions prescribed, recommended, or suggested in its proposed labeling, was not conducted in compliance with the good laboratory practice regulations in Part 58 and no reason for the noncompliance is provided or, if it is, the differences between the practices used in conducting the study and the good laboratory practice regulations do not support the validity of the study; or

(5) Any clinical investigation involving human subjects described in the PMA, subject to the institutional review board regulations in Part 56 or informed consent regulations in Part 50, was not conducted in compliance with those regulations such that the rights or safety of human subjects were not adequately protected.

(b) FDA will issue any order denying approval of the PMA in accordance with § 814.17. The order will inform the applicant of the deficiencies in the PMA, including each applicable ground for denial under section 515(d)(2) of the act and the regulations under this part, and, where practical, will identify measures required to place the PMA in approvable form. The order will include a notice of an opportunity to request review under section 515(d)(3) of the act.

(c) FDA will use the criteria specified in § 860.7 to determine the safety and effectiveness of a device in deciding whether to approve or deny approval of a PMA. FDA may use information other than that submitted by the applicant in making such determination.

(d) FDA will give the public notice of an order denying approval of the PMA. The notice will be published in the FEDERAL REGISTER and will state that a detailed summary of information respecting the safety and effectiveness of the device, including information about any adverse effects of the device on health, has been placed on public display and that copies are available upon request. When a notice of denial of approval is made publicly available, data and information in the PMA file

will be available for public disclosure in accordance with § 814.9.

(e) FDA will issue an order denying approval of a PMA after an approvable or not approvable letter has been sent and the applicant:

(1) Submits a requested amendment but any ground for denying approval of the application under section 515(d)(2) of the act still applies; or

(2) Notifies FDA in writing that the requested amendment will not be submitted; or

(3) Petitions for review under section 515(d)(3) of the act by filing a petition in the form of a petition for reconsideration under § 10.33.

§ 814.46 Withdrawal of approval of a PMA.

(a) FDA may issue an order withdrawing approval of a PMA if, from any information available to the agency, FDA determines that:

(1) Any of the grounds under section 515(e)(1) (A)–(G) of the act applies.

(2) Any postapproval requirement imposed by the PMA approval order or by regulation has not been met.

(3) A nonclinical laboratory study that is described in the PMA and that is essential to show that the device is safe for use under the conditions prescribed, recommended, or suggested in its proposed labeling, was not conducted in compliance with the good laboratory practice regulations in Part 58 and no reason for the noncompliance is provided or, if it is, the differences between the practices used in conducting the study and the good laboratory practice regulations do not support the validity of the study.

(4) Any clinical investigation involving human subjects described in the PMA, subject to the institutional review board regulations in Part 56 or informed consent regulations in Part 50, was not conducted in compliance with those regulations such that the rights or safety of human subjects were not adequately protected.

(b)(1) FDA may seek advice on scientific matters from any appropriate FDA advisory committee in deciding whether to withdraw approval of a PMA.

(2) FDA may use information other than that submitted by the applicant